

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of the Protest of	)	
	)	DOCKET NO. 25629
[Redacted],	)	
	)	
Petitioners.	)	DECISION
_____	)	

On March 28, 2013, the Revenue Operations Division of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted] (taxpayers) reducing their refund in the amount of \$306 from an amended return for taxable year 2011.

The taxpayers’ representative filed a timely appeal. The representative did not request an informal hearing, but did provide additional information for the Commission’s consideration. The Commission hereby issues its decision based upon the information contained in the file along with the additional information provided.

The sole issue for this decision is whether the taxpayers are entitled to a dependency exemption deduction for [Redacted] son, [Redacted]. As part of their appeal, the taxpayers provided a copy of [Redacted] Judgment issued by the [Redacted] Judicial District Court of Idaho on May 16, 2012. The document states:

“[Redacted] is entitled to claim any dependency exemption, deduction, and/or credit allowed under the Internal Revenue Code for both children ([Redacted] and [Redacted]) each year. (redacted) has filed for the benefit for 2011. The parties agree that (redacted) will amend her taxes and that [Redacted] shall be able to claim the children for 2011.”

Both sons are claimed on the taxpayers’ amended return, but only the exemption for [Redacted] is in question.

Taxpayers may claim dependency exemption deductions for their dependents as defined in Internal Revenue Code (IRC) § 152. Under IRC § 152(a), the term “dependent” means a qualifying child or qualifying relative. A qualifying child is defined as an individual who (1) bears a certain relationship to the taxpayer, such as the taxpayer’s child, (2) has the same principal place of abode as the taxpayer for more than one-half of the taxable year, (3) meets certain age requirements, and (4) has not provided over one-half of the individual’s own support for the taxable year. IRC § 152(c)(1)-(3).

However, the dependency exemption, as a general rule, is limited under IRC § 152(e)(1) as follows: if the child received over one-half of his support during the calendar year from his parents who live apart at all times during the last 6 months of the calendar year and the child is in the custody of one or both parents for more than one-half of the calendar year, then the child is treated as the qualifying child of the noncustodial parent if certain requirements are met. The requirements are met if (1) the custodial parent signs a written declaration (in such manner and form as the Secretary may prescribe) that the custodial parent will not claim the child as a dependent for the taxable year; and (2) the noncustodial parent attaches the written declaration to the noncustodial parent’s return for the taxable year. IRC § 152(e)(2).

The term “custodial parent” is defined in IRC § 152(e)(4)(A) as the parent having custody for the greater portion of the calendar year. The Judgment states that the parties will have joint legal custody of the minor children, with primary physical custody to be with the mother. In addition, when responding to a request for information, the taxpayers state that [Redacted] is not the custodial parent.

However, section 152(e) does allow the noncustodial parent to claim the dependent exemption if certain conditions are met. One condition is that the custodial parent must sign a

written declaration that he or she will not claim the child as a dependent. This written declaration may be on Form 8332 or another document for which the declaration is the sole purpose that conforms in substance to Form 8332 and is attached to the noncustodial parents' return.

The taxpayers provided a copy of [Redacted] 2012 Judgment that states he is entitled to the dependent exemptions for his sons in 2011. The Judgment is signed by the custodial parent. An exception was allowed after 1984 and before 2009. During this period, the noncustodial parent could provide certain portions of a divorce decree or other agreement. The exception required that all the elements required on a Form 8332 must be present on the portions of the decree filed with the return including the custodial parent's signature. As long as the Judgment met the same requirements as a Form 8332, it was acceptable.

Although the decree meets most of the requirements of a Form 8332, the exception does not apply in this case since the Judgment is dated May 16, 2012. A Form 8332 or a single purpose document in conformity to Form 8332 is required.

Although the Judgment provides that the taxpayers are entitled to the dependency exemptions for [Redacted] son, State courts, by their decisions, cannot determine issues of [Redacted] tax law. Commissioner v. Tower, 327 U.S. 280 (1946); Kenfield v. United States, 783 F.2d 966 (10th Cir.1986); Nieto v. Commissioner, T.C.Memo. 1992-296.

The taxpayers' remedy, if any, lies in the State court for enforcement of the Judgment.

For taxable year 2011, the taxpayers are not the custodial parents of [Redacted] and do not have a signed release from the custodial parent. Therefore, the taxpayers are not entitled to the dependency exemption.

THEREFORE, the Notice of Deficiency Determination reducing the refund for [Redacted] and [Redacted] dated July 11, 2013, is AFFIRMED.

The taxpayers' refund is reduced by the following amounts:

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2012	\$306.00	\$0.00	\$306.00

An explanation of the taxpayers' right to appeal this decision is enclosed.

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2014.

IDAHO STATE TAX COMMISSION

\_\_\_\_\_  
COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_ 2014, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted]

Receipt No.  
  
\_\_\_\_\_